

Remarks

Applicants have canceled claims 1-23 without prejudice or disclaimer. Applicants have also added new claims 24-38 in order to claim additional embodiments of the subject matter of the provisionally-elected group and sequence.

New claims 24-38 find support in the claims as originally filed and throughout the specification. Specific examples of support for new claims 24-38 are outlined in the table presented below. These examples are not intended to be exhaustive.

Claim	Support in the Specification
24, 25	page 3, paragraph 7; pages 8-9, paragraph 23; page 127, paragraph 41; page 130, paragraph 51; page 332, paragraph 121
29, 30	pages 10-11, paragraph 28; page 282, paragraph 57; page 284, paragraph 62 to page 285, paragraph 65; page 288, paragraph 73 to page 290, paragraph 80; page 343, paragraph 154
34, 35	page 292, paragraph 84 to page 293, paragraph 85; page 296, paragraph 94-96
26, 31, 36	page 334, paragraph 129 to page 228, paragraph 140; page 339, paragraph 143 to page 341, paragraph 148; page 551, paragraph 844-847
27, 32, 37	page 374, paragraph 241 to page 376, paragraph 243; page 558, paragraph 868; page 560, paragraph 879-880
28, 33, 38	page 332, paragraph 121, page 524, paragraph 786; page 542, paragraph 807 to page 550, paragraph 843

Accordingly, no new matter has been added by way of amendment, and entry of the above amendment is therefore respectfully solicited.

II. The Restriction Requirement

Pursuant to Paper No. 7, mailed June 6, 2003, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-XII. In addition, the Examiner has

required that once a Group elected, a further election of a sequence encompassed by that group is required under 35 U.S.C. § 121. The Examiner contends that the inventions are distinct, each from the other.

In response, Applicants provisionally elect, *with traverse*, the invention of Group III, represented by original claims 11, 12, and 16, and new claims 24-38, drawn to polypeptides, for further prosecution. Applicants further provisionally elect the amino acid sequence of SEQ ID NO:966 for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 1-23 have been canceled without prejudice or disclaimer, and that new claims 24-38 are directed to polypeptides of SEQ ID NO:966, subject matter that falls within the ambit of Group III as cast by the Examiner.

With respect to the Examiner's restriction of groups directed to a particular nucleic acid sequence, polypeptides encoded thereby, and antibodies recognizing such polypeptides, Applicants respectfully disagree and traverse. Even assuming *arguendo*, that Groups I-XII represented distinct and independent inventions, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden". M.P.E.P. § 803. In the present situation, although the Examiner has argued at page 3, 8th paragraph of Paper No. 7, that Groups I-IV are "directed to different chemical types or other subject matter regarding the critical limitation therein", Applicants nonetheless submit that, with respect to a given sequence, a search of the claims of the groups directed to that sequence would also provide useful information for the claims of the other groups directed to that sequence. Contrary to the Examiner's arguments at page 4, 1st paragraph of Paper No. 7, Applicants submit that in

many, if not most, scientific publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, antibodies to the protein, and methods of making and using the same. Thus, since the searches for proteins, nucleic acids encoding such proteins, antibodies to such proteins, and methods of making and using the same commonly overlap, Applicants respectfully submit that the Examiner's assertion that the combined search and examination of such compositions would entail a serious burden as to a particular sequence has been rebutted, even assuming *arguendo* that all of the searches were not coextensive.

Accordingly, in view of M.P.E.P. §§ 803 and 803.04, claims directed to Groups I-XII should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

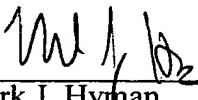
Conclusion

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

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Respectfully submitted,

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